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The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development

Letter dated 10 December 2010 from the Secretary-General addressed to the President of the General Assembly

I have the honour to address you concerning the agenda item entitled, "The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development". In its resolution 64/7 on the International Commission against Impunity in Guatemala (CICIG), the General Assembly requested that I periodically keep the Assembly apprised of the work of the Commission and the implementation of the resolution. It is in keeping with that provision that I wish to provide a brief update on the work of the Commission.

The signing of the 1996 Peace Accords in Guatemala called for the total demobilization of clandestine groups and illegal security forces. This goal, however, was not attained, and the presence and continued activities of such groups, which had evolved into criminal structures, had become an obstacle to the functioning of institutions of justice and security. Faced with that situation, the Government of Guatemala requested assistance from the United Nations to establish an International Commission against Impunity in Guatemala, and in December 2006, both parties signed an agreement for that purpose. The agreement was formally ratified by the Guatemalan Congress in August 2007. The Commission was approved with an initial two-year mandate, which was extended on 15 April 2009 through an exchange of letters between the Foreign Minister of Guatemala and the United Nations Secretariat. Its current mandate runs through September 2011.

The key goal of the Commission is to support, strengthen and assist Guatemalan State institutions responsible for investigating and prosecuting crimes allegedly committed by illegal security forces and clandestine security organizations. It seeks to achieve this goal through:

(a) Identification of illegal security groups and clandestine security structures;

(b) Assistance to the State in the dismantling of such groups and structures;

(c) Promotion of investigations, criminal prosecutions and the punishment of crimes committed by such groups and structures;

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(d) Recommendations to the State concerning public policies for eradicating and preventing the re-emergence of such groups and structures.

The Commission also has the power to file criminal and/or administrative complaints with relevant authorities against civil servants who contribute to impunity by interfering with the administration of justice. While an international body, the Commission investigates and promotes criminal prosecutions within Guatemala's national justice system. It thus plays a key role in strengthening State institutions responsible for criminal prosecutions. The procedural and substantive activity derived from the initiatives of the Commission remain primarily the responsibility of the Guatemalan State. The Commission can file criminal complaints in Guatemala and join criminal proceedings as a complementary prosecutor (*querellante adhesivo*).

Now initiating its fourth year of operations, many of the Commission's investigations have reached the trial stage. The Commission has participated, both as investigator and as complementary prosecutor, in high profile cases that have received ample press coverage, both domestically and internationally. The Commission is currently investigating 27 cases, and in 29 others has provided technical and investigative support to the Special Prosecutor's Unit in Guatemala, which is the main counterpart of the Commission in the Public Prosecutor's Office. Some of the most notable cases include those against former President Alfonso Portillo for illicit enrichment; the investigation into alleged extrajudicial executions committed at the Pavón penitentiary; and the investigation into the murder of Rodrigo Rosenberg. In the Rosenberg case, in which the Commission acted as a complementary prosecutor, convictions were secured for the crimes of murder, illicit association and illegal possession of firearms.

The Commission has continued to promote legal reforms to strengthen the fight against impunity in Guatemala. One of its proposals contributed to the approval of Decree No. 35-2009 reforming the Law on Criminal Jurisdiction in High-Risk Proceedings and, in April 2010, Congress approved Decree No. 18-2010 reforming the Code of Criminal Procedure. However, despite the best efforts of the Commission, many of its proposed legal reforms have not seen substantial progress in Congress. The Commission has also prepared thematic reports on issues ranging from illegal adoptions to firearms and munitions.

I also wish to inform you of two new important developments. First, on 7 June 2010, then Commissioner Carlos Castresana announced his resignation from the Commission. On 2 July 2010, I appointed Francisco Dall'Anese Ruiz of Costa Rica to head the Commission. Until the appointment became effective on 1 August 2010, Mr. Dall'Anese was Attorney-General of Costa Rica, a post he had occupied since 2003. Under the leadership of Mr. Dall'Anese, the Commission has continued its investigations, collaboration with national justice institutions and promotion of needed legislative reforms.

Second, in a letter dated 6 October 2010, President Álvaro Colom of Guatemala wrote to me expressing his support and gratitude for the work conducted by the Commission. The President emphasized that the transition to a new commissioner had been orderly and positive for the success of the Commission. He noted, however, that the period remaining in its mandate was insufficient to achieve the objectives laid out in the Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission against Impunity in

Guatemala, CICIG. To ensure the consolidation and sustainability of its work, President Colom requested a two-year extension of the original mandate until 3 September 2013, in accordance with the procedures established in article 14 of the Agreement and under the same terms. The Government is seeking an early agreement on the extension of the mandate. I support such an extension, with the goal of ensuring a successful implementation of the mandate. To this end, Commissioner Dall'Anese is working closely with Guatemalan institutions, Member States and the United Nations system to develop an exit strategy that will ensure a transfer of capacities to national institutions thereby guaranteeing the sustainability of advances in the justice system. I hope that the eligibility of Guatemala to receive resources from the Peacebuilding Fund will help in this effort. The United Nations country team in Guatemala has been working closely with Guatemalan authorities and the Commission, and such collaboration will be an essential part of the exit strategy.

It should be pointed out that the Commission has been adequately financed owing to the generous contributions of a large number of international donors, complemented by supplementary financing from the Government of Guatemala. The donor community has signalled to us, through periodic meetings held in Guatemala and at United Nations Headquarters, its willingness to continue this support, in tandem with the Government enhancing its own responsibility in providing the justice and security sectors with budgetary support.

Finally, a number of countries in Central America are experiencing the growing and pernicious influence of organized crime and drug trafficking. Public security has been negatively affected by these phenomena, which also threaten to undermine the effectiveness of key State institutions. The Commission's experience as an internationally backed effort to support domestic criminal investigations is being analysed with keen interest by some other countries facing the scourge of organized crime. The United Nations Secretariat has established a dialogue with these States in the subregion, with the goal of examining possibilities of assistance in this field.

The Commission faces many challenges. A number of its investigations have touched upon powerful interests, including within Guatemalan institutions of justice. In this context, the Commission has not been exempt from criticism and has also faced a worrisome security environment. The Commission requires strong international backing as it seeks to finalize investigations, transfer knowledge and practice to Guatemalan institutions and promote the adoption of a legal framework that enables a more effective fight against impunity. I once again express my hope that we will be able to renew the strong partnership among the Commission, the United Nations, the State of Guatemala and other Member States to ensure the effective consolidation of this initiative.

I should like to request that the present letter be circulated as a document of the General Assembly, under agenda item 42.

(*Signed*) **BAN** Ki-moon